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U.S. House of Representatives
Committee on Resources
Washington, DC 20515

May 2, 2005

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Mr. Jim Chilton
Box 423,
17500 W. Chilton Ranch Rd.
Arivaca, AZ 85601

Dear Mr. Chilton:

I am writing to thank you for appearing before the Subcommittee on Forests and Forest Health's Oversight hearing on April 13, 2005, to present testimony concerning *Management Challenges for Grazing and Range Conservation in the Forest Service and Bureau of Land Management*.

Your testimony was extremely helpful in defining the Subcommittee's understanding of the issue and I appreciate the effort you took to prepare and present your testimony.

While many questions were asked during the hearing, the Subcommittee has additional questions attached for your reply. Should you have any questions, please contact Ryan Yates, Subcommittee Clerk, at (202) 225-0691.

Once again, thank you for your extensive effort in making this a valuable hearing.

Best regards,

GREG WALDEN

Chairman

Subcommittee on Forests and Forest Health
Committee on Resources

Mr. Jim Chilton
P.O. Box 423
17500 W. Chilton Ranch Rd.
Arivaca, AZ. 85601

June 14, 2005

Congressman Greg Walden
Chairman
Subcommittee on Forests and Forest Health
U.S. House of Representatives
Committee on Resources
1337 Longworth House Office Building
Washington, D.C. 20515

Re: Replies to Additional Questions of the Subcommittee Relating to James K. Chilton's Testimony Given at Oversight Hearing on April 13, 2005

Dear Chairman Walden,

Thank you for the opportunity to add to the record of my testimony. The material that follows includes my answers to the additional questions that Representative Tom Udall of the Subcommittee had for me, per your May 2, 2005 letter. Documentation supporting these answers is provided hereto in attachment. This documentation graphically illustrates the lengths to which some federal and state employees can and will go to improperly impose their personal agendas on both the agencies they work for and private citizens alike under the cover of the current federal Endangered Species Act.

Before answering these additional questions, however, I would first like to address and provide you with further information on what I believe is the most glaring flaw of the current ESA in regard to 90-Day petition findings.

As currently written, the ESA allows the Fish & Wildlife Service to rubber-stamp "warranted" 90-Day petition findings because a "warranted" call is the only one of three possible determinations the Service could reach in this context that is not subject to judicial review. The other two determinations -- "not warranted" and "warranted but precluded" -- are immediately reviewable by a federal district court.

This basic flaw in how the ESA is currently written has allowed the Fish & Wildlife Service to continue to ignore the Act's requirement that it make all of its determinations solely on the basis of fact derived from the best scientific and commercial information available. In practice, this flaw allows the Service to make "warranted" calls on petitions with impunity by accepting the petitioner's claims at face value and without any semblance of review. As a result, a presumption that the petitioned action may be warranted is created and a 12-month species status review is initiated by the Fish & Wildlife Service in the utter absence of scientific scrutiny or any examination of the petitioner's claims.

This presumption has already further resulted in the generation of computer-modeled maps of "potential habitat" for one of these recently rubber-stamped species, the Gentry Indigo Bush, by Pima County, Arizona, with active input and advice from the Tucson office of the Fish & Wildlife Service. As a consequence of this mapping, some of my private property and state and federal grazing lands have already been identified as "potential habitat" for the Gentry Indigo Bush by a governmental entity -- despite the facts that this plant occurs in only one canyon in Arizona, has never been known to occur on or near my property, and there is no evidence to believe that this plant is threatened with extinction by anything.

All of this is now occurring because the Fish & Wildlife Service rubber-stamped a 90-Day petition finding as "warranted" for the Gentry Indigo Bush without the slightest examination of the veracity of the petitioner's, the Center for Biological Diversity's, claims. (See: Comments to Fish & Wildlife Service on 90-Day Petition Finding for the Gentry Indigo Bush; Pima County, Arizona, Maps of Potential Habitat for the Gentry Indigo Bush, provided in attachment hereto as Attachment "P"). **This unlawful and unacceptable practice by the Service could be easily remedied by Congress by the extension of judicial review to "warranted" 90-Day petition findings as well.**

This said, I now move on to answering each of the additional questions posed to me by the Subcommittee. For the sake of clarity, I restate the question before providing my response.

1. Is it true that you have sent letters threatening to file suit against federal biologists, state biologists, numerous environmental groups, and even a newspaper for criticizing grazing impacts on federal lands?

The short answer is no, I have not sent letters threatening to file suit against federal biologists, state biologists, numerous environmental groups, and even a newspaper for criticizing grazing impacts on federal lands. I have, however, addressed by letter many false statements and improper actions of federal and state employees and one environmental activist corporation, the Center for Biological Diversity, regarding the condition and our management of the Montana Allotment.

First, I caused a letter to be written by my attorney, Mr. Michael Van Zandt, on November 24, 1998, in response to false claims made about the condition of the Schumacher pasture of the Montana Allotment by two Forest Service employees and one Fish & Wildlife Service employee to my range consultant, Dr. Jerry Holechek. An excerpt from Mr. Van Zandt's letter to then Coronado National Forest Supervisor, John McGee, describes this matter as follows:

“As you know, I represent Jim and Sue Chilton concerning the Chilton Ranch in Arivaca, Arizona. It has come to my clients' attention that members of the U.S. Forest Service Staff, Ms. Mima Falk and Mr. Jerry Stefferud, and Mr. Stuart Leon of the U.S. Fish and Wildlife Service have publicly stated that the Chiltons have “heavily overgrazed” or “trashed” the California Gulch area of Schumacher Pasture (or words to that effect) during the July through October 1998 use of this portion of my clients' Montana Grazing Allotment. Mr. Leon personally made this statement to Professor Jerry Holechek and Mr. John Boren at a meeting in Phoenix, Arizona on October 26, 1998. The statement made to Professor Holechek and Mr. Boren was allegedly based on an evaluation of the Schumacher Pasture conducted by Ms. Mima Falk and Mr. Jerry Stefferud of your staff. I want to go on record that these statements made by members of your staff and repeated in a public forum are outrageous lies, aimed at destroying my clients' reputation in the community and designed to injure their credibility with the most preeminent range resource experts in the country.

I demand that your staff members personally apologize to my clients and that they retract these statements and set the record straight. If they do not, my clients will avail themselves of their full legal rights to remedy their slanderous conduct.

... On November 6 and 7, 1998, Professors Holechek and Galt once again visited the Montana Allotment to conduct extensive quantitative and visual evaluation of the use of the range by the Chiltons. The evaluation concludes that the utilization rate of the range in Schumacher Pasture was about 38% during the recent grazing season. The average use of the pasture, therefore, is 19% based on a 24 month rest-rotation cycle, with four months of grazing and 20 months of rest. How anyone could characterize this use as “trashing” the range is beyond comprehension.”

Letter from Attorney Michael J. Van Zandt to Coronado National Forest Supervisor John McGee dated November 24, 1998, provided in attachment hereto as Attachment “A”

Second, I did not threaten to file suit against a newspaper for criticizing grazing impacts on federal lands. Instead, I caused another letter to be written by my attorney, Michael Van Zandt, to Forest Supervisor John McGee upon learning that someone in the Forest Service had provided Mr. Van Zandt's November 24, 1998, letter to the Center for Biological Diversity and that the Center, in turn, had provided this same letter to a newspaper, the Arizona Daily Star. Mr. Van Zandt describes this situation in his December 15, 1998, letter to John McGee as follows:

"I sent you a fax and mailed a copy of a letter to you complaining about remarks attributed to your employees, regarding the condition of the Schumacher Pasture following this year's summer grazing period. I expected to hear from you or your employees regarding the attack on the character of my clients. Instead, I heard from a reporter from the Arizona Star, who had a copy of my letter and was asking for comment. I respectfully declined.

According to the reporter, she was faxed a copy of my letter by the Southwest Center for Biological Diversity. If true, this event is very perplexing and disconcerting both to me and my clients. My letter was a private communication to you regarding actions of your employees. This should have been regarded as a personnel matter and kept confidential. Apparently, someone in the Forest Service has decided to have the newspaper publish the letter as a means of adding libel to the charges my clients are making against your employees. Clearly, the conclusion one must reach from the communication between the Forest Service and the Southwest Center for Biological Diversity is that some employees of the Service and the environmental group are engaged in a conspiracy to interfere with and to deprive my clients of their rights. It is also clear these employees are prejudiced against my clients. Such behavior should not be tolerated by agencies of the United States when it affects the citizens they serve."

Letter from Attorney Michael J. Van Zandt to Coronado Forest Supervisor John McGee dated December 15, 1998, provided in attachment hereto as Attachment "B"

Third, I did not send a letter threatening to sue a state biologist for criticizing grazing impacts on federal lands. I did, however, send a letter to then Chairman of the Arizona Game & Fish Commission, Mr. Hayes Gilstrap, on March 28, 2000, expressing

my wife's and my concern over the harmful and improper actions of one Arizona Game & Fish Department employee in regard to our Montana Allotment. This employee specifically advocated the reduction of our permitted number of cattle from 519 to 252 head (thus taking over 50% of the value of our Montana Allotment) based on a misapplication of the Holechek method for determining range capacity and despite all of the evidence and data previously made available to her documenting our successful stewardship and our commitment to the highest standards of range management on the Montana Allotment.

Shortly after this employee's comments were submitted to the Forest Service, Drs. Holechek and Galt came back out to the ranch and performed a complete range analysis (based on approximately 1000 clippings). Based on this analysis, Drs. Holechek and Galt concluded that permitted numbers should actually be increased to 559 head on the Montana Allotment. The following excerpt from my letter to then Chairman Gilstrap comments on this situation as follows:

“It is clear that a few agenda-driven bureaucrats in both the USFWS and USFS have tried to eliminate or severely restrict grazing on our ranch. These individuals have attempted to strangle our ranching operation by crafting politically-motivated Biological Opinions resulting in the issuance of an incidental take statement that virtually transferred management of the ranch to their control. All circumstantial evidence, together with written evidence, tends to show that Joan Scott of the Arizona Game & Fish Department in Tucson has actively advocated their agenda in numerous communications and in the comments she has submitted to the Forest Service for the ongoing Environmental Assessment on our Montana Allotment. Had we not had the legal right to acquire our records through the FOIA process, we would not have seen the evidence of alliance between the anti-ranching activists and Joan Scott on these matters for the Tucson Office of the Arizona Game & Fish Department.”

Letter from Jim and Sue Chilton to Arizona Game & Fish Commission Chairman W. Hayes Gilstrap dated March 28, 2000; Dr. Jerry Holechek position statement, letters, provided in attachment hereto as Attachment “C”

Fourth, I did not send letters to numerous environmental groups threatening to file suit against them for criticizing grazing impacts on federal lands. I did, however, cause a letter to be sent by my attorney, Mr. Michael Van Zandt, on June 19, 2001, to the Center for Biological Diversity demanding immediate retraction of false and libelous allegations

made by the Center to the Forest Service in a June 5, 2001, letter to the latter. In its June 5, 2001, letter, the Center asked the Forest Service to suspend or cancel our grazing permit for the Montana Allotment because of our allegedly "flagrant abuse of public resources." The Forest Service investigated these allegations and found them to be false. (See: Taylor letter to Graves dated June 5, 2001; Graves' response letter to Taylor dated June 13, 2001; Hocken inspection report dated June 8, 2001, provided in attachment hereto as part of Attachment "D").

Mr. Van Zandt, in his June 19, 2001, demand letter to Martin Taylor of the Center for Biological Diversity summed up the situation as follows:

"By now you have received the Forest Service's response to your letter of June 5, 2001, in which you have published to the United States Forest Service statements that my clients are engaged in "flagrant abuse of public resources." The United States Forest Service has established through its own investigation that no such abuse has occurred and that you completely misunderstood the terms and conditions with regard to utilization rates on the allotment. The Forest Service established that there were no breaches in the exclosure in California Gulch and that any cattle usage there was very old. Moreover, the Forest Service established that utilization rates for forage in the Montana Allotment did not exceed any established standard. Finally, the Forest Service found that one area you refer to contained no agaves but rather sotol. The other area may have contained some broken agaves but attributing them to cattle is speculative at best.

My clients consider your letter of June 5, 2001, to Keith Graves to be libelous, and on behalf of my clients I demand that you immediately retract the statements in the letter and apologize for your unsupported and untrue statements which have damaged my clients' reputation."

Letter from attorney Michael J. Van Zandt to Martin Taylor of the Center for Biological Diversity dated June 19, 2001, provided in attachment hereto as part of Attachment "D"

I trust that the above fully answers the Subcommittee's additional question #1. If not, I will be glad to provide further elaboration.

2. Isn't it true that the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Arizona Department of Game and Fish have all repeatedly declared that the endangered Sonora Chub does occur on the federal Montana Allotment and is being harmed by streamside grazing there? Is there a single state or federal wildlife agency that agrees with your opinion that the species doesn't occur there?

The short answer to the first part of this question is no. The short answer to the second part of this question is yes. It is a matter of documented record that lower California Gulch, upstream from the chub exclosure (which is no longer part of the Montana Allotment), is not viable habitat for the Sonora Chub because it is extremely ephemeral and unable to support this fish other than infrequently and then only briefly.

This is because California Gulch, upstream from the exclosure and to the tinajas, is usually a dry wash. Even the chub exclosure itself has dried up completely during parts of eight of the last ten years. To my knowledge, no wildlife agency -- federal or state -- views an ephemeral wash as viable habitat for Sonora Chubs or any other species of fish. Moreover, neither the Fish & Wildlife Service nor the Forest Service has taken the official position that the Sonora Chub occurs other than infrequently and ephemerally in this usually dry wash segment of California Gulch, that this usually dry wash segment is even capable of providing viable habitat for Sonora Chubs, or that Sonora Chubs are being harmed by "streamside" grazing there.

To the contrary, both the Fish & Wildlife Service and the Forest Service view "streamside" grazing along this usually dry segment of California Gulch as "not likely to adversely affect" the Sonora Chub. Since the Arizona Game & Fish Department did not contest this finding, it apparently agrees with this conclusion as well. In short, the Sonora Chub does not occur on the Montana Allotment at the present time because this aforementioned, ephemeral segment of California Gulch is, as it usually is, currently dry.

Moreover, if the U.S. Fish & Wildlife Service, the U.S. Forest Service, and the Arizona Department of Game & Fish have repeatedly stated that the Sonora Chub is being harmed by streamside grazing on the Montana Allotment, as this question claims, then they have done so without benefit of scientific support and in contradiction of the best scientific and commercial information available. This is because there is no scientific publication that establishes grazing as posing a threat to the Sonora Chub on the Montana Allotment -- or anywhere else, for that matter. (See: Rinne paper provided in attachment hereto as Attachment "E").

Further, grazing at then current levels (which were considerably higher than today) was not viewed as a threat to the Sonora Chub in the final rule listing it as threatened in 1986. (See: Final Rule listing the Sonora Chub as Threatened, April 30, 1986, provided in attachment hereto as Attachment "F"). Nothing has occurred since then that would change that finding today because no scientific studies pertaining to livestock grazing and Sonora Chubs have been performed on the Montana Allotment or anywhere else since this species was listed in 1986.

Finally, in 1995, when the Sonora Chub was first discovered to be present in California Gulch, the Arizona Game & Fish Department described that portion of California Gulch, later removed from the Montana Allotment for the alleged protection of this fish, as follows:

“Water flow in California Gulch was small and discontinuous; with the exception of the half-mile reach at the international boundary. Here the flow was plentiful and continuous. The riparian vegetation in this reach appeared to be in good health and quality. Mining activities, historic and present, are numerous throughout the California Gulch drainage. We are considering the discovery of Sonora chub in California Gulch to be a natural population and a range extension for this species.”

Memorandum from Kirk Young, Native Fish Program Manager, Arizona Game & Fish Department, Sonora Chub Collection in California Gulch, April 15, 1995, provided in attachment hereto as Attachment “G”)

Notwithstanding our apparently excellent management of this riparian area, and notwithstanding the periodic range extension of the Sonora Chub into this area used by our livestock (in 8 out of the past 10 years this part of California Gulch also dried up completely), we were punished for both in the absence of science when the Forest Service arbitrarily expropriated this portion of the Montana Allotment, and the water rights we held on it, from us in 1997 as allegedly necessary to properly protect this fish from our livestock. This is the same fish, I might add, that is abundant on the other side of the border in northern Mexico where unregulated livestock grazing *is* of primary practice, where the status of this fish is viewed as “safe” by Dr. Dean Hendrickson, and where Mr. Jerome Stefferud, author of this fish’s recovery plan and a primary proponent of livestock exclusion, claims in that document that its habitat is “basically intact.”

Despite this obvious contradiction, total lack of scientific support, and willful ignorance of the fact that the Sonora Chub had colonized extreme lower California Gulch under an ongoing livestock grazing regime, Mr. Stefferud, then a Forest Service Zone Fisheries Biologist, and his wife, Mrs. Sally Stefferud, then a Fisheries Biologist working for the Fish & Wildlife Service, took it upon themselves to try to eliminate our grazing of livestock along the ephemeral portion of California Gulch -- upstream of the area that had already been excluded from the Montana Allotment -- for the alleged further benefit of this fish.

To do so, the Stefferuds had to survey the usually dry portion of California Gulch for Sonora Chubs during one of those infrequent times when it was actually running.

That time came for the Stefferuds during the height of the summer rainy season in 2000, when this portion of California Gulch ran continuously for more than a month. (See: Mrs. Sally Stefferud's field notes, August 11, 25 and October 30, provided in attachment hereto as Attachment "H").

In May and July of 2000, however, all of California Gulch was bone-dry when Mrs. Stefferud attended closed-door Fish & Wildlife Service / Forest Service meetings (from which I was unlawfully excluded) about the Biological Assessment and Biological Opinion for the Montana Allotment. At the first of these meetings, in early May of 2000, attended by both Mr. and Mrs. Stefferud, Mr. Stefferud stated the need for a monitoring requirements format in the Biological Opinion for the Montana Allotment, while Mrs. Stefferud speculated about the possibility of an Incidental Take Statement for the Lesser long-nosed bat, with the reminder to "see mima" written below. At the second of these meetings in early July of 2000, Mrs. Stefferud notes that "until the rainy season hits / no cows will be allowed down in the [California Gulch] drainage." (See: Mrs. Sally Stefferud's meeting notes, May, July, 2000, provided in attachment hereto as Attachment "I").

Those as familiar with California Gulch as the Stefferuds know that the Schumacher pasture is used only every other year for four months during the summer and early fall. Those as familiar with California Gulch as the Stefferuds also know that upstream of the old dam abutments Mrs. Stefferud identified on her field map, and to the tinajas, California Gulch is typically a dry wash. (See: Mrs. Sally Stefferud's field map of California Gulch, provided in attachment hereto as part of Attachment "H").

The Stefferuds apparently didn't share this latter and important bit of information with their superiors, however, judging from the limited information I was provided by the Fish & Wildlife Service in response to a FOIA request made on my behalf. (See: Freedom of Information Act responses to Request for all Montana Allotment Documents for Calendar Year 2000, provided in attachment hereto as Attachment "J"). Neither did Mrs. Stefferud apparently share this information at the November 2, 2000 meeting of the Fish & Wildlife Service and the Forest Service about the Biological Opinion for the Montana Allotment. (See: Mrs. Sally Stefferud's meeting notes, November 2, 2000, provided in attachment hereto as Attachment "K"). Instead, Mrs. Stefferud first requested a map of the Montana Allotment from Ms. Ann Watson of the Fish & Wildlife Service and then later, on November 1, 2000, faxed six maps back to Ms. Watson on which the results of Mrs. Stefferud's 2000 surveys of California Gulch for Sonora Chubs were plotted without differentiation of local conditions.

Rather than properly differentiating between these local conditions, Mrs. Stefferud plotted the ephemeral reach temporarily occupied by the chubs that previous summer in exactly the same manner as she plotted stream conditions in the downstream chub enclosure. To compound the matter, Mrs. Stefferud also apparently failed to mention to Ms. Watson that her surveys, all of which were conducted between July 28 and September 1, 2000, or at the height of the summer rainy season, were not performed

under dry conditions typical of those found along this wash segment during the vast majority of each year.

The resulting false inference, created and uncorrected by Mrs. Stefferud, was that California Gulch, from the tinajas downstream to the Mexican border, was homogenous habitat for the Sonora Chub. (See: Mrs. Sally Stefferud's e-mail communications with Ms. Ann Watson dated October 18, 2000, and Mrs. Sally Stefferud's fax of 6 maps and two bibliographies to Ms. Ann Watson dated November 1, 2000; Letter from Jim and Sue Chilton to David Harlow, USF&WS, dated April 12, 2001, provided in attachment hereto as Attachment "L"). As a result, another 1,200 acres of the Montana Allotment were proposed for exclusion from our livestock for the further alleged benefit of this fish.

As I stated in my previous testimony, it was not until I showed Mr. David Harlow, then Arizona Director of the Fish & Wildlife Service, photographic and other documented evidence of the typically dry conditions found along this ephemeral segment of California Gulch, that this false inference created by Mrs. Stefferud was finally corrected, and the 1,200 additional acres of the Montana Allotment proposed for exclusion from livestock were restored to our use.

Finally, and in conclusion, I take the opportunity provided by this question to openly challenge Representative Udall to produce a single journal-published and peer reviewed scientific study that concludes, as he states in this question, that the Sonora Chub is being harmed by streamside grazing on the Montana Allotment. When he fails to do so, as he surely will, I respectfully request that such fact also be made part of the Congressional Record here as well.

3. Being from the Southwest, can you tell me the extent to which the drought has contributed to some of the management challenges facing your industry?

Drought is of common occurrence in the American Southwest. Whereas deep snow and severe winters are the greatest limiting factors on wildlife populations in northern climates, drought is the greatest limiting factor in the Southwest. Thus, the fundamental management challenge facing us is to keep our grazing lands in such good ecological condition that we can withstand drought while staying under maximum levels of acceptable forage utilization.

Many management prescriptions are available to us in achieving this goal. These include rest-rotation grazing management, development of additional waters, development and maintenance of core cow herds that know the country and how to make the most efficient use of it, pasture fencing, regular monitoring, and adjustment in use based on that monitoring. In extreme situations, temporary reductions in numbers may also be called for.

In our experience, however, reduction in numbers hasn't proven necessary other

than infrequently because of our employment of these other management prescriptions. For example, in 2002, we received only 8” of rainfall compared to a 17” annual average. Accordingly, we voluntarily reduced our cow herd by about 20 head to adjust to these conditions.

Yet, regular monitoring revealed that range conditions were so good that we only had to additionally reduce our cow numbers from 400 to 380. Moreover, monitoring of our Santa Rita rest-rotation grazing management strategy revealed that overall forage utilization of all pastures (used and unused by livestock) was 23%, while forage utilization of pastures grazed by livestock was 29% on the Montana Allotment during 2002.

To place these numbers in proper perspective, in 2002 and before our grazing permit for the Montana Allotment was renewed, the Forest Service’s maximum average forage utilization rate by livestock was 55%. When our permit was renewed, the Forest Service reduced this rate to 45%. Even under this reduced forage utilization rate, our actual forage utilization rate in 2002 was 16% below the Forest Service’s new maximum average forage utilization standard for the Montana Allotment.

Finally, scientific studies indicate that light to conservative grazing may actually benefit grass plants during drought compared to no grazing at all. Dr. Jerry Holechek sums up the current state of scientific knowledge on this subject as follows:

“Three studies indicate that light to conservative grazing may actually benefit grass plants during drought compared to no grazing (Johnson 1956, Paulsen and Ares 1962, Ganskopp and Bedell 1981). In eastern Oregon lightly grazed Idaho fescue (*Festuca idahoensis* Elmer) and bluebunch wheatgrass (*Agropyron spicatum* Pursh) had as much and in some cases more herbage, seed stalks, and final height than ungrazed plants following extreme drought (Ganskopp and Bedell 1981). Similar observations were made for black grama on Chihuahuan Desert rangeland in New Mexico (Paulsen and Ares 1962). On coniferous forest rangeland in Colorado, Johnson (1956) found moderately and lightly grazed pastures had less reduction in forage production than grazing excluded plots during drought. In their book, Sonoran Desert researchers Bock and Bock (2000) reported that moderate livestock grazing reduced drought caused mortality on perennial range grasses in southeastern Arizona.”

Holechek, Jerry L. *Controlled Grazing Versus Grazing Exclusion Impacts on Rangeland Ecosystems: What We Have Learned*, Department of Animal & Range Sciences, New

Mexico State University, Las Cruces, provided in attachment hereto as Attachment “Q”

4. On June 25, 2003, you told much of this same story about the Montana grazing allotment in your testimony before the Fisheries, Wildlife and Water Subcommittee of the Senate Environment and Public Works Committee. You didn’t mention the Center for Biological Diversity at all in that testimony. Instead you complained that “the Forest Service and the Fish and Wildlife Service (FWS) were using the [Endangered Species] Act to force me out of the business of ranching.” Why have you changed you[r] story to now blame this environmental group?

First, I did not mention the Center for Biological Diversity at this Senate Subcommittee hearing because the purpose of that hearing was to examine the consulting process required by Section 7 of the Endangered Species Act. Section 7 consultation is between federal agencies (and supposedly an applicant, such as myself) and involves projects where a federal nexus exists. Thus, the Section 7 consultation process for the Montana Allotment did not involve or include environmental activist corporations, such as the Center for Biological Diversity, that had neither standing to participate in nor a vested interest in the outcome of that process.

Second, if Mr. Udall is going to quote me, he should do so accurately and in context, rather than inaccurately and out of context by the use of omission. For the record, and in proper context, the quote attributed to me in this question actually reads as follows:

“Federal land management agencies so seriously misapplied the Endangered Species Act (ESA) to the land in my federal allotments that I unfortunately was forced to conclude that the Forest Service and the Fish and Wildlife Service (FWS) were using the Act to force me out of the business of ranching on historic grazing lands. The agencies took these actions even though thirty years of data in the Coronado National Forest files, detailed production and utilization studies by nationally recognized range management scientists, and reports by numerous other researchers showed my allotments to be currently in good condition and are on an upward trend in which an exceptional number of high value native climax species have been preserved. This struck me as deeply unfair, and I was not willing to accept the judgment of their actions without a fight.”

Testimony of Mr. Jim Chilton before the Fisheries, Wildlife and Water Subcommittee of the Senate Environment and Public Works Committee, June 25, 2003, provided in attachment hereto as Attachment "M"

Third, and contrary to the claim made in this question, I have not "changed my story" to blame the Center for Biological Diversity for these federal agencies' abuse of the ESA's Section 7 consultation process. Moreover, neither can the Center for Biological Diversity be properly described as merely an "environmental group," as this question also errantly states.

The Center for Biological Diversity is an environmental activist 501(c)(3) corporation incorporated under the laws of New Mexico, headquartered in Tucson, Arizona, with additional offices in Phoenix, Arizona, Silver City, New Mexico, Joshua Tree, San Diego and San Francisco, California, Portland, Oregon, and Washington, D.C. At the end of 2003, this corporation had net assets of \$2,476,936, including \$992,354 in "legal costs" received from the U.S. government for suing it. At the end of 2004, this corporation had net assets of \$2,290,829, including \$718,569 in "legal returns" from the U.S. government, and had at least 34 employees. These are hardly numbers that comport with this question's description of this litigious, multi-million-dollar corporation as merely an "environmental group." (See: Excerpts from Center for Biological Diversity 2003, 2004 Annual Reports, provided in attachment hereto as Attachment "N;" See: Recent internet search results for Center for Biological Diversity, provided in attachment hereto as Attachment "O").

Finally, earlier this year, a jury in Tucson, Arizona, properly allocated blame to the Center for Biological Diversity for its false, defamatory, and interfering actions regarding my and the Chilton Ranch and Cattle Company's management of the Montana Allotment. This Superior Court jury did so in the form of verdicts against the Center for Biological Diversity and three of its employees for libel and tortious interference, and in the further form of assessment of \$100,000 in compensatory damages and \$500,000 in punitive damages against them -- the latter for doing so maliciously and with an evil heart.

I trust that the foregoing provides thorough answer to each of the Subcommittee's additional questions. **I believe that my answers to these questions and the documentation supporting those answers further graphically illustrate the lengths to which some federal and state employees can and will go to improperly and unlawfully impose their personal agendas on both the agencies they work for and private citizens alike under the cover of the current federal Endangered Species Act. Justice demands Congress's correction of this shameful behavior through revision of the current Endangered Species Act.**

Thank you again, Chairman Walden, for the opportunity to add to the record of my Congressional testimony.

Sincerely,


Jim Chilton